

THE THIRD BRANCH

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Chief Justice Swears In Newest Member of Supreme Court



Supreme Court Justice Samuel Alito is sworn in by Chief Justice John G. Roberts, Jr., on February 1, 2006, in the East Room of the White House, as Alito's wife, Martha-Ann, their son Phil, and daughter Laura, look on.

(Photo courtesy of Steve Petteway, Collection of the Supreme Court of the United States)

Rent Relief Bill for Judiciary Introduced in House

In direct response to a plea from the Chief Justice of the United States, legislation has been introduced in the House that would give much-needed rent relief to the federal Judiciary.

The Judiciary Rent Reform Act, H.R. 4710, was introduced by Representative F. James Sensenbrenner (R-WI), chair of the House Judiciary Committee. Representatives John Conyers, Jr. (D-MI) and Lamar Smith (R-TX) are co-sponsors of the bill.

"The purpose of this legislation is to ensure the rent paid by the federal Judiciary," Sensenbrenner said, "is rationally and equitably related to the actual costs of providing their facilities." The bill would replace the "commercially-equivalent" rent calculation that the General Services Administration has used with a requirement that the courts pay only for the actual operating expenses incurred in providing space.

"This simple change will result in a dramatic savings in the Judiciary's rent expense," said Sensenbrenner.

Since 1986, the Judiciary's annual rent payments to the General Services Administration have increased from \$133 million to almost \$920 million. "As a percentage of the Judiciary's

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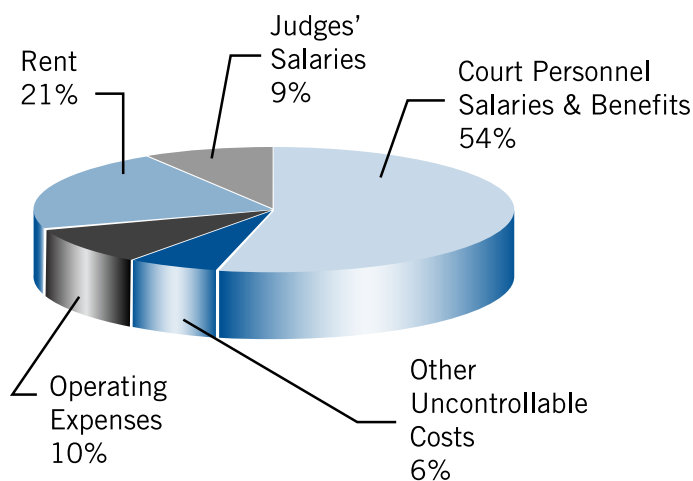
Where the Money Goes—Fiscal Year 2006

For fiscal year 2006, Congress gave the federal Judiciary \$5.72 billion, after application of a 1 percent across-the-board cut. Where does the money go from here?


Of the entire Judicial Branch appropriation, 4.4 percent finds its way to the Supreme Court, the Court of Appeals for the Federal Circuit, the Court of International Trade, the Administrative Office, the Federal Judicial Center, the U.S. Sentencing Commission, and the Judiciary Trust Fund. The lion's share, 95.6 percent, goes to the Courts of Appeals and District Courts, and other judicial services accounts.

Here's how the courts' funding is divided: 79.1 percent is for the court Salaries and Expenses account. Thirteen percent funds federal public defender and community defender

FY 2006 Salaries and Expenses Financial Plan



organizations, compensation for private attorneys representing indigent defendants, and fees of persons providing investigative, expert, and other services under the Criminal Justice Act. Court Security receives 6.8 percent, which funds the procurement, installation, and maintenance of security equipment; and protective services, including court security officers for the courts. The payment of juror fees and expenses accounts for 1.1 percent of the funds appropriated.

The Salaries and Expenses account can be broken down further: 21 percent goes to space rental costs charged by the General Services Administration, 54 percent for court personnel salaries and benefits, 9 percent for judges' pay and benefits, 10 percent for operating expenses including such controllable expenses as furniture, information technology, and tenant alterations, and 6 percent for uncontrollable costs, such as postage and FTS phone services. 

Rent Relief *continued from page 1* operating budget, these payments have climbed from 15.7 percent to 20 percent," Sensenbrenner said.

In his *2005 Year End Report on the Judiciary*, Chief Justice John G. Roberts, Jr., said that the Judiciary is required to pay a large and ever-increasing portion of its budget as rent to another part of the government—GSA—spending almost 16 percent of its total budget. Only 3 percent of the Department of Justice budget goes toward GSA rent, and the Executive Branch as a whole spends less than two-tenths of one percent of its budget on GSA rent.


"During fiscal year 2005, the Judiciary paid \$926 million to GSA in rent, even though GSA's actual cost

for providing space to the Judiciary was \$426 million," said the Chief Justice. "The disparity between the Judiciary's rent and that of other government agencies, and between the cost to GSA of providing space and the amount charged to the Judiciary, is unfair. The federal Judiciary cannot continue to serve as a profit center for GSA."

Sensenbrenner noted that soaring GSA rent payments have compelled the federal courts to make difficult choices, including a decision over 18 months to reduce employee ranks by 1,850 positions.

Sensenbrenner also said there was little doubt that without Congressional action, the budgetary pressures from rising rental costs on the

Judiciary would result in the loss of further court personnel.

"As chairman of the Judiciary Committee," said Sensenbrenner, "I believe Congress has a duty to act to ensure the fair, efficient, and equitable adjudication of all legitimate issues brought before the courts. The use of the courts as a 'profit center' can no longer be tolerated." 

A Year After *Booker*: Most Sentences Still Within Guidelines

At the one-year anniversary of a key Supreme Court decision, federal courts continue to punish more than 60 percent of convicted criminals within guidelines set by the U.S. Sentencing Commission (USSC).

On January 12, 2005, the Supreme Court ruled in the consolidated cases of *U.S. v. Booker* and *U.S. v. Fanfan* that the sentencing guidelines cannot be mandatory. Since then, the USSC has been collecting and analyzing case information on a real-time basis and releasing its findings every few weeks.

Analysis of 54,624 cases submitted to the USSC between January 13, 2005, and December 21, 2005, indicates that 61.2 percent of all federal sentences in that time frame have been within the applicable guideline range.

"The data show that sentencing practices have not changed substantially. There is some variation in some cases, but it's a matter of several percentage points," said U.S. District Judge Paul Cassell (D. Utah), chair of the Judicial Conference Committee on Criminal Law.

"The question is 'What explains all that?' I think what's going on is that trial judges around the country have grown used to operating in a guidelines system," Cassell said. "It's the coin of the realm, if you will. The guidelines, although advisory,

provide a starting point. We've had almost 20 years of experience with the guidelines."

The percentage of federal sentences within guideline ranges remained fairly constant in the year following the *Booker* decision, consistently a bit lower than the 64 percent in fiscal year 2001; 65 percent in FY 2002; 69.4 percent in FY 2003; and 72.2 percent in that period of fiscal year 2004 before the Supreme Court issued a precursor ruling in *Blakley v. Washington*.

Most departures from the guidelines since *Booker*—24.4 percent of all cases submitted—were requested by prosecutors for defendants who provided substantial assistance or for other reasons. By comparison, down-

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No Courthouse Projects for FY 2007 in White House Budget Meanwhile, FY 2006 Courthouse Projects See Costs Rise

When the White House sent its fiscal year 2007 budget plan to Congress this month, it did not ask for funding for any new courthouse construction projects. It did, however, include funding requests by the General Services Administration for repairs and alterations on three Judiciary projects—the Dirksen Courthouse in Chicago, the Thurgood Marshall Courthouse in New York, and a federal courthouse in Milwaukee.

For the current fiscal year, FY 2006, the Judiciary asked for and received funding for a courthouse construction project in San Diego, California, and supported the General Services Administration's request for funding to demolish a building on a future courthouse site in Austin, Texas. This funding was included in P.L. 109-115, the Transportation, Treasury, Housing and Urban Devel-

opment, the Judiciary, the District of Columbia and Independent Agencies Appropriations bill of 2006. Funding also was included for projects in Las Cruces, New Mexico; El Paso, Texas; Cape Girardeau and Jefferson City, Missouri; Cedar Rapids, Iowa; Jackson, Mississippi; Nashville, Tennessee; Tuscaloosa, Alabama, and Rockford, Illinois.

But funding doesn't mean all these FY 2006 projects have the green light. In many cases authorization—the authority to spend the appropriated funds—has been postponed. Only projects in Jackson, Mississippi, Cape Girardeau and Jefferson City, Missouri, have received authorization from both the House and Senate to spend their funds.

Over the last year, delays, the increased price of materials such as concrete and steel, and a tight

construction market have pushed up the cost of some of the projects. Authorization, in most cases, will wait while a more accurate estimate of costs is completed.

Appropriations of \$126 million also will be available in FY 2006 for courthouse repair and alterations projects in the James A. Walsh U.S. Courthouse in Tucson, Arizona; the Emanuel Celler U.S. Courthouse in Brooklyn, New York; the James Watson U.S. Court of International Trade in New York, New York; the Margaret Chase Smith Federal Building, Post Office and Courthouse in Bangor, Maine; and the San Antonio, Texas Post Office/U.S. Courthouse. Funding has been authorized for all projects except the Emanuel Celler U.S. Courthouse in Brooklyn, New York. 

In-Depth continued from page 3

ward departures sought by prosecutors in FY 2003 comprised 22.2 percent of all cases.

In the year since *Booker*, the four most frequently applied primary guidelines showed considerable variation in the percentage of cases within guideline ranges.

Sentences meted out for those convicted of drug trafficking were within the guideline range in 53.6 percent of the cases; for immigration offenses, 56.1 percent; for firearms convictions, 69.9 percent; and for theft and fraud, 70.7 percent.

Asked about that variation, Cassell said, "There are some categories in which substantial assistance is on the table more often, such as in drug-trafficking cases. Prosecutors often are willing to recommend a downward departure in return for information leading them to someone higher in the criminal organization."

The post-*Booker* statistics on downward departures requested by prosecutors bear out Cassell's explanation. Government lawyers sought sentences more lenient than the guidelines in 32.9 percent of drug-trafficking cases and 33.1 percent of unlawful entry immigration cases, but in only 12.5 percent of firearms cases and 12 percent of theft and fraud cases.

"Judicial complaints about the rigidity, complexity, and harshness of the federal sentencing guidelines were legion before *Booker*," Douglas Berman, an Ohio State University law professor and sentencing law expert, wrote recently. "One might have thus expected a radical transformation of federal sentencing after the Supreme Court recast the guidelines from stern mandates to simple advice. But a year later, as revealed by numerous district and circuit court opinions and cumulative post-*Booker* data, the conversion of the guidelines from mandatory to advisory has not significantly

altered the central features of federal sentencing."

He added, "We still see the federal sentencing system exceedingly focused on guideline calculations based on judicial fact finding. Most sentences are still imposed within the (now advisory) guideline ranges. Long terms of imprisonment for most offenders remain the norm."

U.S. District Judge Lynn Adelman (E.D. Wis.) and his law clerk Jon Deitrich wrote in a recent opinion column for a legal publication that the *Booker* ruling has improved the sentencing process.

"*Booker* has brought us rules moderated by mercy," they wrote. "Judges are now better able to consider the offense, the offender, and the needs of crime victims in determining the appropriate sentences. At the same time, the burden on judges to explain their sentencing decisions is significant, and that's fair, too."

The column added: "*Booker* enables judges to impose sentences appro-

priate to the specific offenses and individuals who appear before them. In doing so, *Booker* recognizes that no code can fully account for all the factors that should affect a sentence.

"But *Booker* also imposes constraints on judicial discretion. By leaving the guidelines intact and directing courts to consult them, *Booker* provides an objective marker against which to measure sentences."

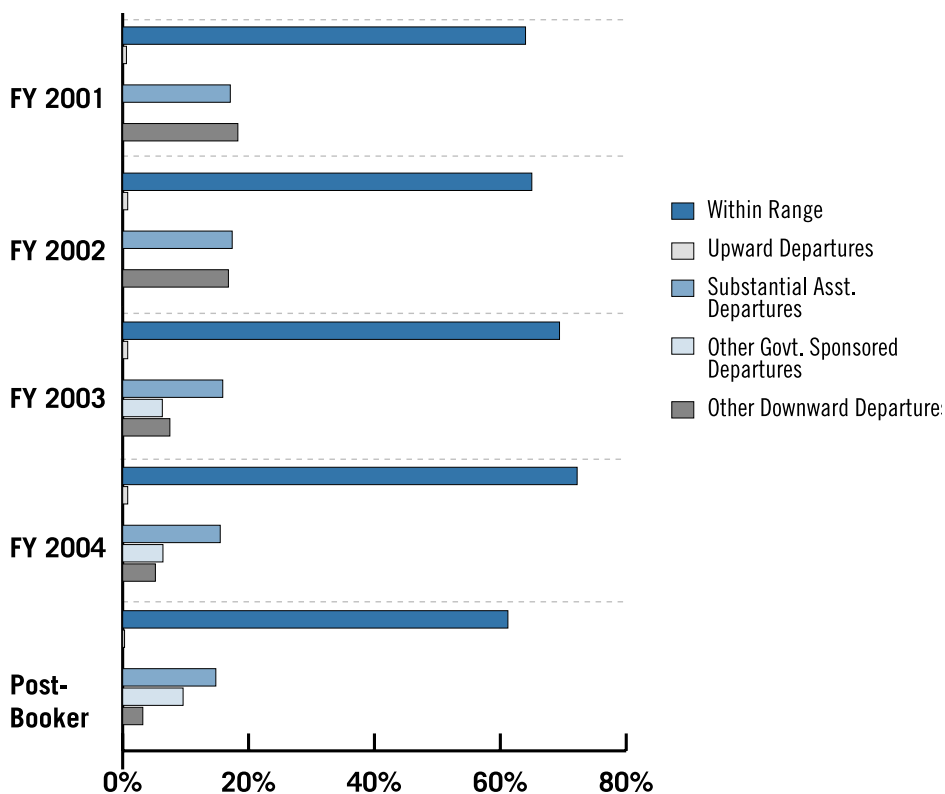
Nationwide, the average length of all prison sentences handed down since the *Booker* decision has been 56 months. That is a bit longer than the average prison sentences for all cases reported to the USSC for fiscal years 2000 (50 months), 2001 (50 months), 2002 (51 months) and 2003 (52 months). It is the exact length of average sentences for that period of FY 2004 before the *Blakely* ruling.

Likewise, the average sentence imposed for the most frequently applied guidelines nationwide remained relatively consistent post-*Booker*.

The average prison sentence for drug-trafficking crimes since *Booker*

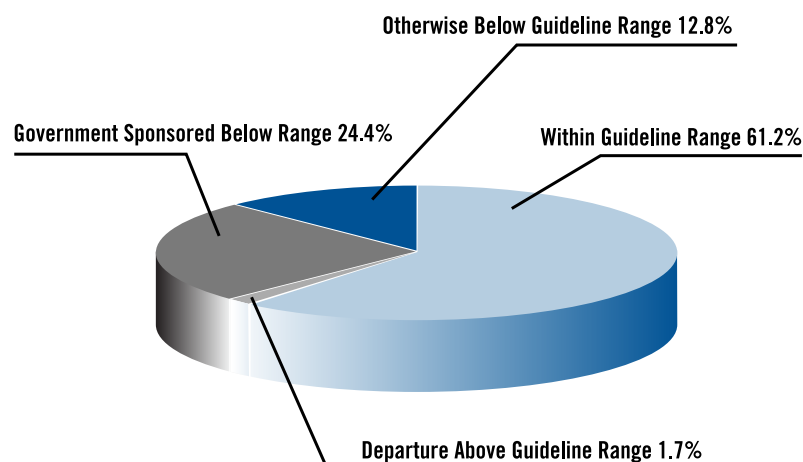
National Guideline Application Trends

Sentence Relative to Guideline Range



Source: U.S. Sentencing Commission

Sentences Imposed January 12, 2005 - December 21, 2005 Relative to the Guideline Range



was 83 months, compared to an identical 83 months in pre-*Blakely* FY 2004, 77 months in fiscal year 2003, and 71 months in FY 2002. For immigration crimes, the average prison sentence has been 27 months since *Booker*, compared to 29 months in pre-*Blakely* FY 2004, 28 months in FY 2003, and 30 months in FY 2002.

Consistency, and even a slight upward trend, is evident, too, in the average length of sentences for firearms offenses (58 months since *Booker*, 59 months in pre-*Blakely* FY 2004, 56 months in FY 2003, and 53 months in FY 2002) and for theft and fraud (21 months since *Booker*, 19 months in pre-*Booker* FY 2004, 16 months in FY 2003, and 16 months in FY 2002).

The USSC, created in 1984 by Congress as an independent agency within the Judiciary, plans to release a report this spring on *Booker*'s impact on federal sentencing.

In an interview published in the December issue of *The Third Branch*, Judge Ricardo H. Hinojosa (S.D. Tex.), chair of the USSC, said the Commission will "continue to closely monitor post-*Booker* issues."

He said the USSC "is dedicated to its mission to carry out the goals of sentencing reform and, as the *Booker* decision itself says, 'to

provide certainty and fairness in meeting the purposes of sentencing while avoiding unwarranted disparities . . . (and) maintaining sufficient flexibility to permit individualized sentences when warranted.'"

A recent National Center for State Courts publication, "Future Trends in State Courts 2005," noted that "tough on crime" prison sentences in state courts also have grown longer in recent years.

"As states face the high costs of incarceration, politicians (liberals and conservatives alike) will increasingly stress a 'smart-on-crime' approach . . . Prison construction will slow during the coming decade, as competing budget priorities intervene. Prison-building moratorium projects, such as those in New York and California, are likely to grow," the publication predicted.

"Courts are likely to face conflicting demands on sentencing. Budget concerns may result in an interest in less-severe or alternative sentencing, while mandatory sentencing laws continue to restrict sentencing flexibility in many jurisdictions," the publication said.

Although Congress reacted swiftly to the Supreme Court's decision in *Booker*, no new law has been enacted regarding the sentencing

guidelines.

However, a bill, *Defending America's Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005*, was introduced in the House. It would essentially convert the bottom of the advisory sentencing guideline ranges into mandatory minimums, directly amend the sentencing guidelines, and narrow the application of the "safety valve" that allows judges to apply the guidelines instead of mandatory minimums in cases of certain first-time, non-violent drug offenders.

A letter relating the views of the Judicial Conference on the legislation was transmitted by Judge Sim Lake (S.D. Tex.), then-chair of the Conference's Criminal Law Committee, to the House Judiciary Committee on April 25, 2005.

"The Judicial Conference has . . . historically opposed direct congressional amendment of the sentencing guidelines because such amendments undermine the basic premise underlying the establishment of the Sentencing Commission—that an independent body of experts appointed by the President and confirmed by the Senate, operating with the benefit of the views of interested members of the public, is best suited to develop and refine such guidelines," the letter said.

The House did not vote on the bill, and the Senate Judiciary Committee has not yet taken up the issue.

Congress, however, has directed the Administrative Office to report to the House and Senate Committees on Appropriations on the *Booker* decision's impact as part of a call for "all new trends in caseload changes" brought about by various new laws and developments.

AO Director to Retire in 2006

Leonidas Ralph Mecham, Director of the Administrative Office of the U.S. Courts for more than 20 years, has announced he will retire this year. Mecham has agreed to stay until a successor is in place. A search committee named by the Chief Justice is now reviewing candidates.

Mecham's tenure at the AO has been marked by remarkable advances in technology in the federal courts, the decentralization of administrative functions, substantial increases in pay over inflation, a much-needed courthouse construction program, the development of an outstanding benefits program for judges and employees, and many other successes. "My goals throughout my tenure were good relations, openness, accountability and achievement, leadership, and service to the courts," said Mecham. "I leave believing I have accomplished most, if not all, of those goals, in great part through an outstanding AO staff, the best in government."



Director Leonidas Ralph Mecham

Judicial Security Outside the Courthouse to Improve

Nearly a year after the murder of Judge Joan Lefkow's husband and mother in her Chicago home, a program to provide all federal judges with increased judicial security outside of courthouse facilities finally is materializing. A national contract to install home intrusion detection systems in the homes of federal judges was awarded by the U.S. Marshals Service in December 2005, and installations began in February 2006. The USMS has agreed to pay monitoring and maintenance charges on the new systems for fiscal year 2006, and to seek funding for subsequent years.

"Threats and attacks against judges strike at the core of our system of justice," said Judge David Sentelle (D.C. Cir.), chair of the Judicial Conference Committee on Security. "Judges must be free to make judicial decisions without the fear of physical

harm to themselves or to members of their families. With the resources Congress has given them, the U.S. Marshals Service can better protect federal judges and their families."

In April 2005, Administrative Office Director Leonidas Ralph Mecham told the President and Congressional leaders that the murders of the Lefkow family members and the killings at a county courthouse in Atlanta, Georgia, "have left judges feeling particularly vulnerable, not only for themselves, but also for their families." The AO called on Congress to provide immediate funding for a comprehensive package of off-site security enhancements.

In May 2005, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, became law, giving the U.S. Marshals Service \$11.9 million, requested by the AO, "for increased judicial security outside of courthouse facilities, including priority consideration of home intrusion detection systems in the homes of federal judges."

In its conference report on the bill, the Senate Appropriations

Committee said, "Recent events prove a need for increased judicial security, including outside courthouse facilities, which falls under the jurisdiction of the USMS. The Committee believes the USMS should reevaluate existing policies governing when and whether suspicious threats and inappropriate communications demand judicial protection. The Committee also recommends funding increases to enhance the USMS's ability to assess and respond to such threats, including funding for off-site security enhancements such as home intrusion detection systems."

The funding will be used to procure and install alarm systems for federal judges. It also will pay for judicial protective details and other judicial security measures employed by the USMS to investigate and counter threats to judges. Those measures include staffing for the USMS's Office of Protective Intelligence and its threat assessment capabilities.

Help Desks for People Without Lawyers

"It is important to all of us that every citizen, whether educated or not, have a fair and practical opportunity for their grievances to be heard," said Chief Judge Charles Kocoras (N.D. Ill.). That's why his court, the Northern District of Illinois, offers a newly created "help desk" where non-lawyers can get advice from a volunteer attorney.

Similarly, in the U.S. Bankruptcy Court for the District of Arizona, members of the clerk of court's staff take turns offering advice to non-lawyers at a "self-help center" within the Phoenix courthouse.

"We try to give them the tools to represent themselves," Clerk of Court Terry Miller said of the year-old initiative. "So far, it's been pretty successful."

Navigating the federal court system can be a daunting task for the non-lawyer involved in a civil case. Courts long have used various methods to make the process more user-friendly. Now, a few courts offer consultations at the courthouse with court employees or volunteer lawyers.

"It's apparent that there was a crying need for such a service," Kocoras said. "It is no exaggeration to say that for most lay people, including pro se filers, the proce-

dural and substantive aspects of the law represent an unsolvable maze."

When people representing themselves in civil cases visit the federal courthouse in downtown Chicago, they can make their way to the help desk, open for most of each court day, and get free advice from a Chicago Bar Association member. A session might last from a few minutes to a half hour.

Kocoras said an initial benefit is that a pro se litigant "will have an audience with whom they can share their plight"—an opportunity the judge calls significant.

The non-lawyer contemplating a lawsuit may be advised to seek help from a city or state agency, or other resource, rather than file suit. "If the problem described calls for the preparation of a civil complaint, then the attorney at the help desk can assist or direct the preparation of a complaint in an appropriate legal form," Kocoras said.

"The desk should help the court by potentially reducing or eliminating the need for dismissal of the complaint for reasons of its deficiency, either before or after a motion is filed by the party being sued," he added. "This will save defense counsel's time and expense, as well as lessening the burdens on the judge in considering poorly drafted complaints."

The Chicago Bar Foundation, the charitable arm of the Chicago Bar

Association, supplied the necessary funding for the project.


A far greater percentage of people involved in bankruptcy cases do not have a lawyer's help. In Phoenix, the self-help center assists pro se debtors and creditors from 11:30 a.m. to 1:00 p.m. on Tuesdays and Thursdays, offering them educational information and the appropriate forms.

"We've been able to provide this service at essentially no cost because our people work at the center on a rotating basis, as part of their routine," Miller said.


The bankruptcy court also partnered with the bankruptcy section of the Arizona State Bar to host a volunteer attorney one day a week to answer basic questions from litigants who do not have their own lawyer.

"Our efforts are still in their infancy, but we like what we've seen," Miller said.

In Chicago, Chief Judge Kocoras encouraged other courts to consider similar projects if funding issues can be resolved.

"I believe such a help desk would be beneficial for other district courts, particularly those in metropolitan areas," he said. 

Hourly Rate Increases for CJA Attorneys

The Judiciary Appropriations Act of 2006, P.L. 109-115, included funds to raise the hourly compensation rates for attorneys appointed to represent eligible persons under the Criminal Justice Act, 18 U.S.C. § 3006A, and the death penalty provisions of 21 U.S.C. 848(q), as amended by the Antiterrorism and Effective Death Penalty Act of 1996. The non-capital hourly compensation rate increased from \$90 to \$92, and the maximum hourly rate for federal capital prosecutions and capital post-conviction proceedings increased from \$160 to \$163. The new hourly compensation rates apply to work performed on or after January 1, 2006. 

How Are We Doing?

The *Third Branch* newsletter would like your opinion. Tell us what you like and don't like about our newsletter, topics you'd like us to cover, and changes you'd like to see. Visit <http://www.uscourts.gov/ttb/survey.html> and give us your opinion before Friday, March 17.

Appointed: Virginia M. Kendal, as U.S. District Judge, U.S. District Court for the Northern District of Illinois, January 17.

Appointed: W. Keith Watkins, as U.S. District Judge, U.S. District Court for the Middle District of Alabama, January 12.

Appointed: James M. Peck, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of New York, January 10.

Appointed: James E. Gates, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of North Carolina, January 27.

Appointed: Oswald Parada, as U.S. Magistrate Judge, U.S. District Court for the Central District of California; January 20.

Appointed: Jacqueline Chooljian, as U.S. Magistrate Judge, U.S. District Court for the Central District of California, January 9.

Elevated: U.S. Court of Appeals Judge Edith Hollan Jones, to Chief Judge, U.S. Court of Appeals for the Fifth Circuit, succeeding U.S. Courts of Appeals Judge Carolyn Dineen King, January 16.

Elevated: U.S. District Judge Harvey Bartle III, to Chief Judge, U.S. District Court for the Eastern District of Pennsylvania, succeeding U.S. District Judge James T. Giles, January 1.

Elevated: U.S. District Judge Karen E. Schreier, to Chief Judge, U.S. District Court for the District of South Dakota, succeeding U.S. District Judge Lawrence L. Piersol, January 1.

Elevated: U.S. District Judge Mark L. Wolf, to Chief Judge, U.S. District Court for the District of Massachusetts, succeeding U.S. District Judge William G. Young, January 2.

Elevated: U.S. Bankruptcy Judge Thomas L. Perkins, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Central District of Illinois, succeeding U.S. Bankruptcy Judge Gerald D. Fines, January 1.

Elevated: U.S. Bankruptcy Judge Barbara J. Houser, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Texas, succeeding U.S. Bankruptcy Judge Steven A. Felsenthal, September 19.

Senior Status: U.S. Court of Appeals Judge David M. Ebel, U.S. Court of Appeals for the Tenth Circuit, January 16.

Senior Status: U.S. District Judge Frank W. Bullock, Jr., U.S. District Court for the Middle District of North Carolina, December 31.

Senior Status: U.S. District Judge Claude M. Hilton, U.S. District Court for the Eastern District of Virginia, December 31.

Senior Status: U.S. District Judge Malcolm J. Howard, U.S. District Court for the Eastern District of North Carolina, December 31.

Senior Status: U.S. Chief District Judge Graham Calder Mullen, U.S. District Court for the Western District of North Carolina, December 1.

Senior Status: U.S. District Judge Gordon J. Quist, U.S. District Court for the Western District of Michigan, January 1.

Senior Status: U.S. District Judge Ewing Werlein, Jr., U.S. District Court for the Southern District of Texas, January 1.

Retired: U.S. Magistrate Judge Harry W. McKee, U.S. District Court for the Eastern District of Texas, January 1.

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DIRECTOR
Leonidas Ralph Mecham

EDITOR-IN-CHIEF
David A. Sellers

MANAGING EDITOR
Karen E. Redmond

PRODUCTION
Linda Stanton

CONTRIBUTOR
Dick Carelli

Please direct all inquiries and address changes to *The Third Branch* at the above address or to
Karen_Redmond@ao.uscourts.gov.

JUDICIAL BOXSCORE

As of February 1, 2006

Courts of Appeals

Vacancies	17
Nominees	7

District Courts

Vacancies	35
Nominees	19

Courts of International Trade

Vacancies	1
Nominees	0

Courts with "Judicial Emergencies"

16

For more information on vacancies in the federal Judiciary, visit our website at www.uscourts.gov under Newsroom.

Visiting Judges Take Their Work on the Road

In the absence of new judgeships, courts have coped with rising caseloads in a variety of ways. One of the most successful has been the use of visiting judges.

Two types of temporary assignments are authorized: assignment of judges to other courts within their circuits and assignment of judges to courts outside their circuits. A single judge may accept multiple assignments in a year. In fiscal year 2005, judges accepted 324 assignments to courts of appeals either within or outside their own circuits, participating in 4,893 appeals.

At the district court level in FY 2005, judges accepted 221 assignments to work in courts both within and outside their own circuits, handling 1,239 civil cases and 1,250 criminal defendants. And according to data collected by the Judicial Conference Committee on Intercircuit Assignments and the Committee on Judicial Resources, which has jurisdiction over human resource allocation, the bargain price tag for all this work is about the cost of one new judgeship, or approximately \$1 million.

With such a favorable cost-benefit, it's not surprising that these committees are urging courts to expand their use of visiting judges.

"The committees believe strongly that courts should be encouraged to consider using visiting judges," said Judge Royce Lamberth (D.D.C.), who chairs the Committee on Intercircuit Assignments, "especially on the courts of appeals where there have been no new judgeships since 1990. We couldn't hope to keep current with the appeals caseload without visiting judges."

According to Judge W. Royal Furgeson (W.D. Tex.), chair of the

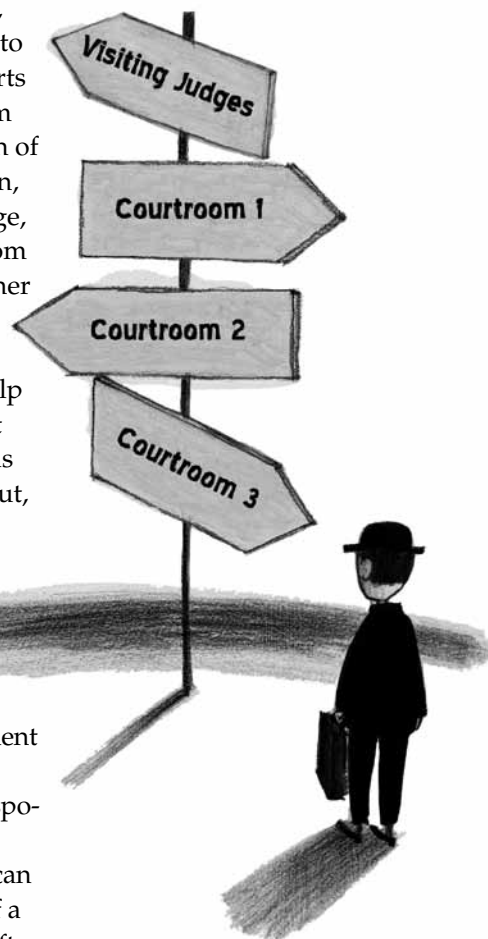
Committee on Judicial Resources, it's an efficient and effective way to use resources and staff when courts are overwhelmed. He speaks from experience. "In the Pecos Division of my border district," said Furgeson, "where I was the only sitting judge, I saw my criminal caseload go from 40 cases per year to 400 cases. Other border judges experienced the same overload, and we desperately needed help. We got that help from visiting judges in our circuit and in other circuits, some from as far away as New York, Connecticut, and New Hampshire."

According to 28 U.S.C. § 291 and §292, if the calendar for a court is substantially behind schedule or otherwise warrants additional judicial assistance, the temporary assignment of a judge from another circuit or another district to expedite the disposition of cases may be necessary.

Even a single judicial vacancy can put at risk the timely resolution of a court's caseload. "There is a lag, often a long lag, between when a judicial vacancy occurs and when it is filled," noted Lamberth. "Visiting judges fill that void. Other courts may be inundated with temporary caseloads, or, like the border courts, have a high volume of cases and be unable to fill vacancies. Visiting judges may be the only way they can cope."

The Committee on Intercircuit Assignments traditionally marks a judge's transition to senior status with an invitation to serve as a visiting judge. At every orientation of a new chief judge, Lamberth also takes the opportunity to tell them of the advantages of visiting judges.

"If a court has traditionally resisted using visiting judges, we urge them to reconsider," said Lamberth. "They may know of a judge with whom their colleagues and the members of the bar would be comfortable. Propose someone, and we're happy to ask if they'd be willing to serve."



Courts that don't use visiting judges usually cite a lack of clerical support and/or space. However, the use of Case Management/Electronic Case Files in the district courts has made it even easier for visiting judges in terms of handling paperwork. And with CM/ECF, a visiting judge may not have to travel to a court to offer assistance.

Larry Baerman, clerk for the District Court for the Northern District of New York, says his court has used visiting judges for over 15 years. The court made use of eight visiting judges in 2005, who disposed of 93 cases, mostly prisoner suits.

"CM/ECF has made this so easy," said Baerman. "Judge Lyle E. Strom in the District of Nebraska was assigned 15 cases last year and we are in the process of assigning 25 cases to Judge Garnett Thomas Eisele in the Eastern District of Arkansas through CM/ECF. The visiting

See *Visiting Judges* on page 12

Gang Member Supervision Growing Part of Job for Probation Officers

According to the Department of Justice's 2002 National Young Gang Survey, approximately 731,500 gang members and 21,500 gangs were active in the U.S. in 2002. Those totals don't include prison gangs, motorcycle gangs, and adult gangs.

While gang membership is not a federal offense, the crimes committed by gangs—largely drug trafficking, homicides, and other violent offenses—often bring gang members into the federal system and under the supervision of federal probation officers.

As an indicator of the scale of gang member supervision, this summer the Office of Probation and the Office of Pretrial Services in the Central District of California will host the first National Symposium on Gang Information for U.S. Pretrial and Probation Officers.

"This will be an important and timely event," says Chief Probation Officer Loretta Martin (C. D. Calif.), "because the supervision of gang members is now part of the job for nearly every probation and pretrial services officer in the federal courts, as gang members are more transient." The symposium will cover gang intelligence and history, officer safety, supervision strategies, terrorism, gangs on the East Coast, California, and in prison, organized crime, and much more.

Of course, probation and pretrial services offices are continually looking for better ways to supervise and track gang members.

"Gangs have always been pretty active in New Jersey," says Chief Probation Officer Chris Maloney, "and we have everything: biker gangs, hate groups, traditional and nontraditional organized crime, and youth gangs. Probation officers in the district usually rely on the pre-sentence investigation and regular contact with law enforcement to learn if the offender is a documented gang member. But gang affiliation really

doesn't change supervision." Typically, offenders with extensive records are assigned to Intensive Supervision Specialists, whose caseloads allow for closer supervision and who receive advanced training through such groups as the Middle Atlantic-Great Lakes Law Enforcement Network (MAGLOCEN).

As in New Jersey, gang members in the Southern District of Indiana are assigned to special offender specialists. Chief Probation Office Barb Roembke brings in speakers and members of the local gang task force to train officers in the identification of gang colors, graffiti, and tattoos. The district also gets help from an expert on the Outlaw Motorcycle Gang, when these gang members are under supervision.

The Western District of Missouri partners with local law and city task forces to exchange information on gang members. When gang members are under supervision, says Chief Probation Officer Stephen Donnelly, the district's Project Nightlight sends teams of three probation officers for routine home visits, usually at night. Not only is there safety in numbers, but officers can talk with members of the family while the offender is being interviewed.

In the Northern District of Illinois, although there is no specialized program for gangs, there is a referral service to help people who want to get out of gangs have their gang tattoos removed. According to Chief Probation Officer Richard Tracy, training of officers in gang identification is largely for safety reasons. "The main focus in supervision," adds Tracy, "is to help them get employment—the one thing that gets them away from gangs."

The Office of Probation for the Central District of California is rightfully proud of a program it calls Reorientation and Peer sessions (RAP), started in its Inglewood Office

in 2000, which has enjoyed a high success rate. "RAP is designed for high risk offenders, usually gang members, who struggle with lifestyle changes," says Martin.

Federal probation offices nationwide can call on the Sacramento Intelligence Unit or SIU. The Unit, which has been active for over 15 years, is a clearinghouse for gang activity. SIU has a wealth of information on nearly every major gang in the country, including information about their origin, founders, bylaws, and codes. SIU also is a great resource for tattoo interpretation and identification, hand signs, and other forms of non-verbal gang communication.

Headed by the Bureau of Prisons, SIU's personnel is pulled from BOP, the U.S. Marshals Service, the Bureau of Alcohol, Tobacco and Firearms, the California Department of Corrections, and the federal probation system. Paul Garber and Kathleen Boyd are the federal probation presence at SIU.

When an inmate is released with a Security Threat Group (STG) designation—a designation triggered by gang affiliation and other factors—SIU prepares a profile of the offender and sends it to the probation officer in the district where the inmate will be under supervision. Garber and Boyd prepare 3,500 to 4,000 profiles annually. Approximately 15 federal probation districts use SIU resources extensively while other districts are periodic users of SIU's services.

"Recently," said Garber, "a probation officer suspected, based upon tattoos, that a newly released offender was affiliated with a gang. She e-mailed me photos of the tattoos and I shared them with an SIU intelligence



officer who, in a matter of moments, was able to determine the offender was connected with the Tango Blast, a Texas-based gang.

SIU also can provide an offender's institutional history to the probation officer. This can be beneficial when assessing an offender's circle of associations.

"Association is probably the biggest issue," says U.S. Probation Officer Tom Caruso, who is Drug and Alcohol Treatment Manager in the Eastern District of Missouri. "It's hard to break that support system a gang member has with his or her former gang." Caruso, who had eight years with the state juvenile courts before joining the federal probation office, says, "The offenders we're seeing are getting younger. We have to give them alternatives to gang life, including employment and education."

Last summer, in an effort to better track gang activity, law enforcement agencies in Caruso's district began meeting monthly to exchange information. Caruso also is tracking known gang members who are on probation by cross-referencing his list of probationers with local law enforcements records. He hopes to automate the list so it updates as soon as an offender is released from prison.

The Utah Probation Office has turned to the web to monitor offenders, increase cooperation with local law enforcement, and educate and boost awareness of gang activities. It developed a web-based Gang Affiliation Database and Gang Education Page, accessible only to probation officers, that includes photos of offenders, their gang-related tattoos, moniker, gang affiliation, residence and primary vehicle, PACTS identification number, date of birth, special court-ordered gang conditions and other information. The Education Page was added to keep the officers aware of local and national gang activities.


In the Northern District of Texas,

Probation Officer Reynaldo Gutierrez maintains a database with gang information, and he's a member of most of the local gang task forces, exchanging information with, at his estimation, at least 200 officers in 50 different agencies. He also runs a full day of training for probation officers on basic gang identification and gang tattoo identification. "Identifying tattoos helps us with an offender's record," said Gutierrez. "I photograph all their tattoos and blow up the photos. They can hide names, associations, drug use, and information on what they did in prison in a tattoo's design."

To reach young offenders, Chief Probation Officer John M. Bocon's staff in the District of Massachusetts present programs at local high schools and every three months at juvenile detention facilities. The program uses the CD-ROM based program, *Fed Facts: The Real Deal*. It's a drug education program that the U.S. Probation Office in the Middle District of Florida and the Florida Regional Community Policing Institute developed to teach students the legal consequences of drug crime. Bocon and his officers also have modeled a federal re-entry program for impact offenders on a nationally-known initiative by the Boston police. Bocon defines impact offenders as those offenders with convictions for serious gun, drug or violent offenses, many of whom have been affiliated with gangs. Offenders are told what will happen if they re-offend, but also are given the support of community mentors. Some of the mentors are former offenders who have done well after incarceration and who can counsel them, and point them to jobs and housing.

Bocon's office has increased its contact with gang units within the Boston police department, sending officers twice a month to Boston gang unit meetings where they share information on gang activity. While

gangs in Massachusetts historically have been defined as loosely formed associations identified with housing developments or streets, over the last year offenders have been identified with links to national gangs, such as the Crips, Bloods, and MS-13. Says Bocon, "It's only a matter of time before national gang members are under federal supervision here, says Bocon."

According to the Administrative Office's Matt Rowland, Deputy Assistant Director in the Office of Probation and Pretrial Services, the probation and pretrial services system is tackling the growing problem of gangs with both correctional and controlling techniques. "The end result," says Rowland, "is that the probation officer is there to assist offenders in living a law-abiding lifestyle. In those instances where the offender does not remain crime free or otherwise refuses to comply with the court's conditions of supervision, the probation officer is there to quickly pursue proper remedies with the court." 

Visiting Judges continued from page 9
judges and their staff simply log in through the system and no files need to be mailed. They receive a notice of electronic filing each time documents are filed and they can bring the documents up and view them on their computers or print them in their chambers. When judges are ready to render a decision on a motion, they simply e-mail the orders to our office and we upload them to CM/ECF."


Some visiting judges have even videoconferenced arguments in cases. "If pending caseload is a problem," states Baerman, "then a visiting judge is the way to go."

Visiting judges are considered to be so helpful that courts requesting additional judgeships in the Judiciary's biennial judgeship survey are asked if they are using them, and if not, why not. Visiting judges go where they're needed, a temporary solution to heavy caseloads and vacancies. They are, however, not a permanent solution to judgeship needs.

"Visiting judges kept our district afloat until we got new judgeships,"


said Furgeson. "But they are not the right solution to long-term needs."

Only the Chief Justice has the authority to designate judges to serve in courts outside their circuits. The intercircuit assignment of an active judge begins with a request for assistance to the Judicial Conference Committee on Intercircuit Assignments by a chief circuit judge. It also requires the approval of the chief judges of the lending circuit and court.

For intracircuit assignments, the chief circuit judge has the authority to designate judges to serve in other districts. Senior judges can consent to temporary assignments, but are required to consult with chief circuit and district judges prior to accepting the assignment in another district or circuit. Visiting judges generally serve for at least two weeks in district courts and for a regular sitting (two or three days) in courts of appeals, but assignments are made without regard to specific dates. 

White House Budget Goes to Hill

The White House sent its fiscal year 2007 budget to Congress in early February. Overall, the President's request would provide non-defense, non-homeland security executive branch agencies with 0.5 percent less in appropriated funds in FY 2007 than their enacted FY 2006 appropriations.

Although the criminal caseload is impacted by the Department of Homeland Security, for budgetary purposes the Judiciary is considered to be non-defense and non-homeland security. However, by law the Judiciary's budget must be transmitted to the Congress unchanged by the President. Included in the \$2.77 trillion budget plan is the Judiciary's appropriations request for \$6.26 billion, a 9.4 percent increase over FY 2006 available appropriations. Congressional hearings on the Judiciary's FY 2007 budget are scheduled for mid-March. 

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